

## **REMARKS/ARGUMENTS**

Claims 1-32, 45 and 47-58 remain in the application. Claims 33-44 and 59-63 are hereby withdrawn in response to a restriction requirement with traverse. Claim 46 is hereby canceled without prejudice. Claims 1-32 and 45-58 were rejected in the Office Action mailed February 11, 2008 (hereinafter referred to as "Office Action"). This response is being filed along with a one month extension of time. An electronic credit card authorization is also being submitted to pay the required fees. Applicant respectfully submits that no other fees are due at this time and no new matter has been added by the forgoing amendments. In view of the following remarks and amendments, applicant respectfully requests a timely Notice of Allowance be issued in this case.

### ***Traverse of Restriction Requirement***

The Office Action indicated that claims 1-63 are subject to a restriction requirement based on the following inventions:

Group I: Claims 1-32 and 45-58, drawn to a system and method of a vending device with multi-level wagering system, classified in class 463, subclasses 16 and 20; and

Group II: Claims 33-44 and 59-63, drawn to a system and method for a multi-level wagering account, classified in class 463, subclass 25.

The Office Action indicated that "subcombination group I has separate utility such as a system and method of a vending device with multi-level wagering system which differs from group II which is system and method for a multi-wagering account" and the "examiner would have to conduct multiple separate searches for the broadness of the claims" resulting in "an extra burden on the examiner" (Office Action, page 2, lines 11-16). Applicant respectfully traverses the restriction requirement for the following reasons.

Every requirement to restrict has two aspects, (1) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct, and (2) the reasons for insisting upon restriction there between. MPEP § 808. With regard to the first aspect, applicant respectfully submits that the Office Action merely states a conclusion that the "subcombinations are distinct" or "different" without stating specific reasons for such a conclusion. Applicant respectfully submits that both groups include the multi-level wagering account. Accordingly, applicant respectfully submits that the Office Action fails to satisfy the first aspect.

With regard to the second aspect, the reasons under MPEP § 808 given in the Office Action for insisting upon exercising 35 U.S.C. § 121 to require restriction must be reasons approved by the Commissioner. The reasons approved by the Commissioner are set out in MPEP § 803: (1) the inventions must be independent (see MPEP §§ 802.01,

806.04, 808.01) or distinct as claimed (see MPEP §§ 806.05, 806.05(i); and (2) there must be a serious burden on the examiner if restriction is not required (see MPEP §§ 803.02, 806.04(a) (j), 808.01(a) and 808.02). The Office Action must provide reasons and/or examples to support conclusions. MPEP § 803.

For purposes of the initial requirement, a serious burden on the examiner may be shown, *prima facie*, if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. MPEP § 803. Applicant respectfully asserts that the Office Action fails to make a *prima facie* case that restriction is required. The Office Action states that the inventions are related, Groups I and II are both classified in class 463. Moreover, the Office Action merely provides a conclusion that the inventions are either independent or distinct. Applicant respectfully submits that these explanations are insufficient. Furthermore, the Office Action failed to establish that a serious burden would be imposed on the examiner if restriction were not required. In particular, applicant respectfully submits that searching one class having two subclasses is not a serious burden. Therefore, applicant respectfully asserts that the *prima facie* requirements of MPEP § 803 have not been met. As a result, applicant respectfully submits that the restriction requirement is hereby traversed.

Claims 33-44 and 59-63 have been withdrawn in response to the restriction requirement with traverse. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. In addition, applicant reserves the right to present claims 33-44 and 59-63 in a divisional application.

#### ***Claim Rejections under 35 U.S.C. § 103***

Claims 1-3, 6-18, 21-32, 45 and 47-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,319,122 to Packes, Jr. et al. (hereinafter referred to as “Packes”) in view of U.S. Patent Application Publication No. 2004/0063494 to Oram et al. (hereinafter referred to as “Oram”). In addition, claims 4-5, 19-20 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Packes in view of U.S. Patent No. 6,980,962 to Arganbright et al. (hereinafter referred to as “Arganbright”). Applicant respectfully submits that claims 1-32, 45 and 47-58 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

Packes discloses a device and method for “rewarding a player of a game based on the activity of other players” (Abstract, lines 1-3). The bonus provided to the player is based on payouts made to the other players during a set of subsequent gaming sessions

(Abstract, lines 7-13; col. 3, lines 32-38, 41-48, 58-67; col. 5, lines 65-67; col. 8, lines 10-12; col. 9, line 59-col. 10, line 6). In other words, the bonus is based on the winnings of the other players during a specified period of time (the player's active gaming session). Applicant respectfully submits that the Packes bonus system and method does not disclose, teach or suggest the system and method recited in claims 1-32, 45 and 47-58.

***Claims 1, 18 and 32***

First, applicant respectfully submits that Packes does not disclose, teach or suggest assigning a multi-level wagering account having a play value to the current user in exchange for the sales price as recited in claims 1, 18 and 32. The account in Packes is not purchased by the user for the sales price. Instead, the account in Packes appears to be part of a loyalty program, frequently players club or rewards program (col. 6, lines 52-col. 7, line 7). As a result, Packes does not disclose, teach or suggest assigning a multi-level wagering account having a play value to the current user in exchange for the sales price as recited in claims 1, 18 and 32.

Second, applicant respectfully submits that Packes does not disclose, teach or suggest distributing the sales price accepted from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula by increasing the play value of one or more multi-level wagering accounts of the specified previous users as recited in claims 1, 18 and 32. As previously described, there is no sales price in Packes. Moreover, the bonus in Packes appears to be paid by the house based on the winnings of the other players during a specified period of time. The bonus in Packes is not distributed from the sales prices paid by subsequent purchasers of the multi-level wagering accounts. As a result, Packes does not disclose, teach or suggest distributing the sales price accepted from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula by increasing the play value of one or more multi-level wagering accounts of the specified previous users as recited in claims 1, 18 and 32.

Third, applicant respectfully submits that Packes does not disclose, teach or suggest increasing the play value of the multi-level wagering account of the current user based on the sales price accepted from a specified number of subsequent users in accordance with the payout formula as recited in claims 1, 18 and 32. The bonus in Packes is based on payouts made to the other players during a set of subsequent gaming sessions (Abstract, lines 7-13; col. 3, lines 32-38, 41-48, 58-67; col. 5, lines 65-67; col. 8, lines 10-12; col. 9, line 59-col. 10, line 6). The bonus in Packes is based on winnings and time. It is not based on a sales price received from subsequent purchasers of the multi-level wagering accounts. Moreover, the bonus in Packes is not based on a specified number of subsequent purchasers of the multi-level wagering accounts. As a result, Packes does not disclose, teach or suggest increasing the play value of the multi-level wagering account of the current user based on the sales price accepted from a specified

number of subsequent users in accordance with the payout formula as recited in claims 1, 18 and 32.

Fourth, applicant respectfully submits that modifying Packes to (a) assign a multi-level wagering account having a play value to the current user in exchange for the sales price, (b) distributes the sales price accepted from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula by increasing the play value of one or more multi-level wagering accounts of the specified previous users, and (c) increase the play value of the multi-level wagering account of the current user based on the sales price accepted from a specified number of subsequent users in accordance with the payout formula would change the principle of operation of Packes. Moreover, such modifications would not satisfy the goals of Packes to increase the duration of the player's gaming sessions (col. 2, lines 17-19, 29-31) because the payouts recited in claims 1, 18 and 32 are based on the sales price and a specified number of purchasers. MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie obvious*.” As a result, applicant respectfully submits that it would not be obvious to one skilled in the art to change Packes to incorporate the elements recited in claims 1, 18 and 32.

Fifth, applicant respectfully submits that Oram and Arganbright, either alone or in combination, do not cure all of the deficiencies of Packes stated above.

For all the reasons previously discussed, applicant respectfully submits that claims 1, 18 and 32 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 1, 18 and 32 be withdrawn.

#### *Claim 45*

Applicant respectfully submits that Packes does not disclose, teach or suggest accumulating play value in a current multi-level wagering account from a portion of the sales price of a specified number of multi-level wagering accounts purchased subsequent to the current multi-level wagering account in accordance with a payout formula as recited in claim 45. The account in Packes is not purchased by the user for the sales price. Instead, the account in Packes appears to be part of a loyalty program, frequently players club or rewards program (col. 6, lines 52-col. 7, line 7). Moreover, the bonus in Packes appears to be paid by the house based on the winnings of the other players during a specified period of time. (Abstract, lines 7-13; col. 3, lines 32-38, 41-48, 58-67; col. 5, lines 65-67; col. 8, lines 10-12; col. 9, line 59-col. 10, line 6). The bonus in Packes is based on winnings and time. It is not based on sales price and a specified number of subsequent purchasers of the multi-level wagering accounts. As a result, Packes does not disclose, teach or suggest accumulating play value in a current multi-level wagering

account from a portion of the sales price of a specified number of multi-level wagering accounts purchased subsequent to the current multi-level wagering account in accordance with a payout formula as recited in claim 45.

Second, applicant respectfully submits that modifying Packes to accumulate play value in a current multi-level wagering account from a portion of the sales price of a specified number of multi-level wagering accounts purchased subsequent to the current multi-level wagering account in accordance with a payout formula would change the principle of operation of Packes. Moreover, such modifications would not satisfy the goals of Packes to increase the duration of the player's gaming sessions (col. 2, lines 17-19, 29-31) because the payouts recited in claims 1, 18 and 32 are based on the sales price and a specified number of purchasers. MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” As a result, applicant respectfully submits that it would not be obvious to one skilled in the art to change Packes to incorporate the elements recited in claim 45.

Fifth, applicant respectfully submits that Oram and Arganbright, either alone or in combination, do not cure all of the deficiencies of Packes stated above.

For all the reasons previously discussed, applicant respectfully submits that claim 45 is, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claim 45 be withdrawn.

***Claims 2-17, 19-31 and 47-58***

Applicant respectfully submits that claims 2-17, 19-31 and 47-58 ultimately depend from claims 1, 18 and 45, which are allowable for the reasons stated above, and further distinguish over the cited references. Claims 2-17, 19-31 and 47-58 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 2-17, 19-31 and 47-58 be withdrawn.

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Appl. No. 10/824,629  
Amtd. dated Jun. 11, 2008  
Reply to Office action of Feb. 11, 2008

***Conclusion***

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 1-32, 45 and 47-58 are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,

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